

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRIS HYNES,

Plaintiff,

-v.-

9:05-CV-0380
(FJS)(GHL)

MICHAEL KIRKPATRICK, Correction Sergeant;
ERIC GRAF, Correction Officer; MICHAEL GRANEY,
Correction Officer; MICHAEL SMITH, Correction Officer;
MICHAEL O'SULLIVAN, Correction Officer; JAMES
GUMNERSON, Correction Captain; JAMES WOLCZYK,
Commissioner's Hearing Officer; and DONALD SELSKY,
Director of Special Housing,

Defendants.

APPEARANCES:

OF COUNSEL:

CHRIS HYNES
Plaintiff, *pro se*

HON. ELIOT SPITZER
New York State Attorney General
Attorneys for Represented Defendants

ED J. THOMPSON, Esq.
Assistant Attorney General

GEORGE H. LOWE, United States Magistrate Judge

DECISION and ORDER

Plaintiff Chris Hynes commenced this action by filing a civil rights complaint on March 25, 2005. Dkt. No. 1. Thereafter, Defendants Selsky, Kirkpatrick, Graf, Graney, O'Sullivan, and Wolczyk filed an answer to the complaint. Dkt. No. 20. A Pretrial Scheduling Order was issued on October 27, 2005. Dkt. No. 23. The Pretrial Scheduling Order required, *inter alia*, that non-dispositive motions be filed on or before December 30, 2005. *Id.* By letter motion dated April 18, 2006, Plaintiff requested, *inter alia*, an extension of the non-dispositive motion filing deadline so that he could correct the names of the two defendants that were not yet served. Dkt. No. 26. By Order of this Court filed on May 12, 2006, the non-dispositive motion filing deadline was extended until June 30, 2006 "FOR THE SOLE PURPOSE of allowing plaintiff to submit a motion to amend

his complaint to correct the names of defendants Gumnerson and Smith.” *Id.* at 2.

Presently before the Court is an amended complaint filed by Plaintiff.¹ Dkt. No. 28. The amended complaint contains allegations identical to those in Plaintiff’s first complaint. The amended complaint merely corrects the name of two defendants. Defendant “Michael Smith” is changed to “Brian Smith” and defendant “James Gumnerson” is changed to “Craig Gummneron.” Dkt. No. 28.

The amended complaint is approved for filing in this action.

WHEREFORE, it is hereby

ORDERED, that the Clerk amend the docket to substitute defendant “Brian Smith” in place of “Michael Smith” and defendant “Craig Gummneron” in place of “James Gumnerson,” and it is further

ORDERED, that Plaintiff serve a copy of the amended complaint on opposing counsel **within thirty (30) days** of the filing date of this Order, and it is further

ORDERED, that Plaintiff provide the Court with two copies of his amended complaint and completed USM-285 forms for service on the two newly identified defendants, and it is further

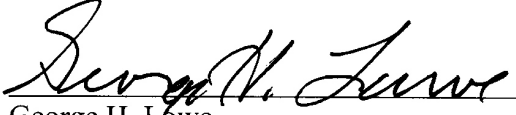
ORDERED, that the Clerk issue an amended summons naming the newly identified defendants and forward them, along with copies of the amended complaint, to the United States Marshal for service upon the newly identified defendants, and it is further

ORDERED, that a formal response to Plaintiff’s amended complaint be filed by the newly

¹ Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend his pleading “once as a matter of course at any time before a responsive pleading is served.” In this case, since a responsive pleading, namely an answer, was served before Plaintiff filed this amended complaint, Plaintiff should have submitted a motion to amend his complaint. In light of Plaintiff’s *pro se* status, and because Plaintiff is merely trying to correct the names of two of the defendants, the Court will overlook this technical error.

identified defendants or their counsel as provided for in Rule 12 of the Federal Rules of Civil Procedure.

Dated: October 23, 2006
Syracuse, New York


George H. Lowe
United States Magistrate Judge